IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

Bail Appl..No. 7923 of 2007()

(IN IRINJALAKUDA EXCISE CR 41/2000 PENDING BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT, IRINJALAKUDA AS LPR NO.164/2004)

PETITIONER:ACCUSED:

MOHANAN, AGED 52 YEARS,
S/O. KRISHNAN,
ANALIPARAMBIL HOUSE,
KALLETUMKARA VILLAGE,
KALLETUMKARA VADAKUMURI DESOM,
MUKUNDAPURAM TALUK.

BY ADV. SRI.K.DIVAKARAN
SRI.RIJO M.S.

RESPONDENT:COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R. BASANT, J.

B.A.NO. 7923 OF 2007

Dated this the 17th day of December, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment in a prosecution under Sec.55 of the Kerala Abkari Act. The petitioner was not arrested at the crime stage. Investigation is complete. Final report has already been filed. Cognizance has been taken. Committal proceedings has been registered before the learned Magistrate. Reckoning the petitioner is an absconding accused, coercive processes have been issued against the petitioner. The petitioner apprehends imminent arrest in execution of such processes.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. He is willing to surrender before the learned Magistrate. But he apprehends that the case having transferred to the list of Long

Pending Cases, the learned Magistrate may not consider the application for regular bail on merits, in accordance with law and expeditiously. It is prayed that directions under Sec.438 and/or Sec.482 of the Cr.P.C. may be issued in favour of the petitioner.

3. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision

reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

5. In the result, this application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

6. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge